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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 COREY T. GAUSE,

15 Plaintiff,

16 vs.

17 UNITED PARCEL SERVICE, INC.;
18 UPS GROUND FREIGHT, INC.; and
DOES 1 through 50, Inclusive,

19 Defendants.

CASE NO. CV 13-02948 SI

STIPULATED PROTECTIVE
ORDER

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17 UNITED PARCEL SERVICE, INC. and
18 UPS GROUND FREIGHT, INC.
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1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a
12 party to this action but are retained to represent or advise a party to this action and
13 have appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.
7 However, the protections conferred by this Stipulation and Order do not cover the
8 following information: (a) any information that is in the public domain at the time
9 of disclosure to a Receiving Party or becomes part of the public domain after its
10 disclosure to a Receiving Party as a result of publication not involving a violation
11 of this Order, including becoming part of the public record through trial or
12 otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source
14 who obtained the information lawfully and under no obligation of confidentiality to
15 the Designating Party. Any use of Protected Material at trial shall be governed by a
16 separate agreement or order.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
22 or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify - so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations
8 that are shown to be clearly unjustified or that have been made for an improper
9 purpose (e.g., to unnecessarily encumber or retard the case development process or
10 to impose unnecessary expenses and burdens on other parties) expose the
11 Designating Party to sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
24 page that contains protected material. If only a portion or portions of the material
25 on a page qualifies for protection, the Producing Party also must clearly identify the
26 protected portion(s) (e.g., by making appropriate markings in the margins). A Party
27 or Non-Party that makes original documents or materials available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

1 which material it would like copied and produced. During the inspection and
 2 before the designation, all of the material made available for inspection shall be
 3 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
 4 documents it wants copied and produced, the Producing Party must determine
 5 which documents, or portions thereof, qualify for protection under this Order.
 6 Then, before producing the specified documents, the Producing Party must affix the
 7 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
 8 portion or portions of the material on a page qualifies for protection, the Producing
 9 Party also must clearly identify the protected portion(s) (e.g., by making
 10 appropriate markings in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial
 12 proceedings, that the Designating Party identify on the record, before the close of
 13 the deposition, hearing, or other proceeding, all protected testimony.

14 (c) for information produced in some form other than documentary and
 15 for any other tangible items, that the Producing Party affix in a prominent place on
 16 the exterior of the container or containers in which the information or item is stored
 17 the legend “CONFIDENTIAL.” If only a portion or portions of the information or
 18 item warrant protection, the Producing Party, to the extent practicable, shall identify
 19 the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive
 22 the Designating Party’s right to secure protection under this Order for such
 23 material. Upon timely correction of a designation, the Receiving Party must make
 24 reasonable efforts to assure that the material is treated in accordance with the
 25 provisions of this Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 28 designation of confidentiality at any time. Unless a prompt challenge to a

1 Designating Party's confidentiality designation is necessary to avoid foreseeable,
2 substantial unfairness, unnecessary economic burdens, or a significant disruption or
3 delay of the litigation, a Party does not waive its right to challenge a confidentiality
4 designation by electing not to mount a challenge promptly after the original
5 designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
7 resolution process by providing written notice of each designation it is challenging
8 and describing the basis for each challenge. To avoid ambiguity as to whether a
9 challenge has been made, the written notice must recite that the challenge to
10 confidentiality is being made in accordance with this specific paragraph of the
11 Protective Order. The parties shall attempt to resolve each challenge in good faith
12 and must begin the process by conferring directly (in voice to voice dialogue; other
13 forms of communication are not sufficient) within 14 days of the date of service of
14 notice. In conferring, the Challenging Party must explain the basis for its belief that
15 the confidentiality designation was not proper and must give the Designating Party
16 an opportunity to review the designated material, to reconsider the circumstances,
17 and, if no change in designation is offered, to explain the basis for the chosen
18 designation. A Challenging Party may proceed to the next stage of the challenge
19 process only if it has engaged in this meet and confer process first or establishes
20 that the Designating Party is unwilling to participate in the meet and confer process
21 in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
23 court intervention, the Designating Party shall file and serve a motion to retain
24 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
25 79-5 and General Order 62, if applicable) within 21 days of the initial notice of
26 challenge or within 14 days of the parties agreeing that the meet and confer process
27 will not resolve their dispute, whichever is earlier. Each such motion must be
28 accompanied by a competent declaration affirming that the movant has complied

1 with the meet and confer requirements imposed in the preceding paragraph. Failure
 2 by the Designating Party to make such a motion including the required declaration
 3 within 21 days (or 14 days, if applicable) shall automatically waive the
 4 confidentiality designation for each challenged designation. In addition, the
 5 Challenging Party may file a motion challenging a confidentiality designation at
 6 any time if there is good cause for doing so, including a challenge to the
 7 designation of a deposition transcript or any portions thereof. Any motion brought
 8 pursuant to this provision must be accompanied by a competent declaration
 9 affirming that the movant has complied with the meet and confer requirements
 10 imposed by the preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the
 12 Designating Party. Frivolous challenges, and those made for an improper purpose
 13 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 14 expose the Challenging Party to sanctions. Unless the Designating Party has
 15 waived the confidentiality designation by failing to file a motion to retain
 16 confidentiality as described above, all parties shall continue to afford the material in
 17 question the level of protection to which it is entitled under the Producing Party's
 18 designation until the court rules on the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 21 disclosed or produced by another Party or by a Non-Party in connection with this
 22 case only for prosecuting, defending, or attempting to settle this litigation. Such
 23 Protected Material may be disclosed only to the categories of persons and under the
 24 conditions described in this Order. When the litigation has been terminated, a
 25 Receiving Party must comply with the provisions of section 13 below (FINAL
 26 DISPOSITION).

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1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
9 as employees of said Outside Counsel of Record to whom it is reasonably necessary
10 to disclose the information for this litigation and who have signed the
11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
12 A;

13 (b) the officers, directors, and employees (including House Counsel) of
14 the Receiving Party to whom disclosure is reasonably necessary for this litigation
15 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
16 A);

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this litigation and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff, professional jury or trial consultants,
22 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
23 for this litigation and who have signed the “Acknowledgment and Agreement to Be
24 Bound” (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is
26 reasonably necessary and who have signed the “Acknowledgment and Agreement
27 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
28 ordered by the court. Pages of transcribed deposition testimony or exhibits to

1 depositions that reveal Protected Material must be marked “CONFIDENTIAL
2 PURSUANT TO PROTECTIVE ORDER” by the court reporter and may not be
3 disclosed to anyone except as permitted under this Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such notification
12 shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order
14 to issue in the other litigation that some or all of the material covered by the
15 subpoena or order is subject to this Protective Order. Such notification shall
16 include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” before a determination by the court from which the
22 subpoena or order issued, unless the Party has obtained the Designating Party’s
23 permission. The Designating Party shall bear the burden and expense of seeking
24 protection in that court of its confidential material - and nothing in these provisions
25 should be construed as authorizing or encouraging a Receiving Party in this action
26 to disobey a lawful directive from another court.

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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
 4 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
 5 produced by Non-Parties in connection with this litigation is protected by the
 6 remedies and relief provided by this Order. Nothing in these provisions should be
 7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
 9 produce a Non-Party’s confidential information in its possession, and the Party is
 10 subject to an agreement with the Non-Party not to produce the Non-Party’s
 11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
 13 that some or all of the information requested is subject to a confidentiality
 14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
 16 Protective Order in this litigation, the relevant discovery request(s), and a
 17 reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection by the
 19 Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this
 21 court within 14 days of receiving the notice and accompanying information, the
 22 Receiving Party may produce the Non-Party’s confidential information responsive
 23 to the discovery request. If the Non-Party timely seeks a protective order, the
 24 Receiving Party shall not produce any information in its possession or control that
 25 is subject to the confidentiality agreement with the Non-Party before a
 26 determination by the court. Absent a court order to the contrary, the Non-Party
 27 shall bear the burden and expense of seeking protection in this court of its Protected
 28 Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on

1 any ground to use in evidence of any of the material covered by this Protective
2 Order.

3 12.3 Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this action any Protected
6 Material. A Party that seeks to file under seal any Protected Material must comply
7 with Civil Local Rule 79-5 and General Order 62. Protected Material may only be
8 filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order
10 62, a sealing order will issue only upon a request establishing that the Protected
11 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
12 protection under the law. If a Receiving Party's request to file Protected Material
13 under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by
14 the court, then the Receiving Party may file the information in the public record
15 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

16 13. FINAL DISPOSITION

17 Within 60 days after the final disposition of this action, as defined in
18 paragraph 4, each Receiving Party must return all Protected Material to the
19 Producing Party or destroy such material. As used in this subdivision, "all
20 Protected Material" includes all copies, abstracts, compilations, summaries, and any
21 other format reproducing or capturing any of the Protected Material. Whether the
22 Protected Material is returned or destroyed, the Receiving Party must submit a
23 written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
26 that the Receiving Party has not retained any copies, abstracts, compilations,
27 summaries or any other format reproducing or capturing any of the Protected
28 Material. Notwithstanding this provision, Counsel are entitled to retain an archival

1 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
2 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
3 work product, and consultant and expert work product, even if such materials
4 contain Protected Material. Any such archival copies that contain or constitute
5 Protected Material remain subject to this Protective Order as set forth in Section 4
6 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8
9 DATED: September ____, 2013 BRYAN SCHWARTZ
10 JEAN K. HYAMS

11
12 By: _____/s/ Jean K. Hyams
JEAN K. HYAMS

13 Attorneys for Plaintiff
14 COREY T. GAUSE

15 DATED: September ____, 2013 E. JEFFREY GRUBE
16 GINA GUARIENTI COOK
PAUL HASTINGS LLP

17
18 By: _____/s/ Gina Guarienti Cook
GINA GUARIENTI COOK

19 Attorneys for Defendants
20 UNITED PARCEL SERVICE, INC. and UPS
21 GROUND FREIGHT, INC.

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23 DATED: 9/26/13

24 
25 _____
26 Judge Susan Illston
27 United States District/Magistrate Judge
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Northern District of
 California on _____ in the case of *Gause v. United*
Parcel Service, Inc. et al., Case No. CV 13-02948 SI. I agree to comply with and
 to be bound by all the terms of this Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Northern District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____